ADMINISTRATIVE BULLETIN

EXECUTIVE OFFICE FOR ADMINISTRATION AND FINANCE

87-1

TO: Cabinet Secretaries and Agency Heads

FROM: Frank T. Keefe, Secretary

DATE: March 11, 1987

RE: State Policy on Smoking in the Workplace

Statement of Purpose and Scope

This policy is promulgated for the purpose of providing a safe and healthy environment in work areas under the jurisdiction of the Executive Branch. It is intended to reduce the health risks associated with exposure to tobacco smoke while minimizing the inconvenience to smokers. The policy is applicable to all work areas and public areas where Executive Branch agencies are located throughout the Commonwealth.

I. Phase One

In order to eliminate a large volume of tobacco smoke as soon as practicable, smoking will no longer be permitted in the areas listed below effective March 15, 1987:

- any room in which business meetings are regularly conducted, or in which a business meeting is in progress.

- patient rooms and patients' service areas, except those areas set aside for patients to smoke.

- classrooms

- stairwells

II. Phase Two

In order to minimize the disruption caused by the imposition of smoking restrictions, the prohibition of smoking in other areas as listed below shall occur by May 15, 1987. Restrictions in these areas shall be implemented in conjunction with the designation of enclosed areas in which employees may smoke. Smoking in designated areas of lobbies and cafeterias shall be permitted provided that no more than 25% of the available space is set aside for this purpose. It is the responsibility of each agency head to ensure

that an area in each work location is set aside for such purposes. When such areas are designated, smoking shall no longer be permitted in:

- any work areas, including private offices,
- waiting rooms, visitor reception areas, lobbies and entranceways to which the public has access,
- restrooms,
- state vehicles in which any occupant is a non-smoker.

III. Resource Assistance

Acknowledging that the successful implementation of this policy requires a cooperative effort and mutual respect and sensitivity on the part of both smokers and non-smokers, agency heads, employees and unions are encouraged to develop and recommend programs to address problems associated with the implementation. Existing programs should be utilized where possible. Most of the health care insurance providers have available, at nominal or reduced cost, smoking cessation programs to support those employees who wish to quit smoking. Additional monies are available to fund programs associated with the implementation of this policy and inquiries concerning same can be made to the Group Insurance Commission.

IV. Dispute Resolution

Problems or disputes arising out of the implementation of this policy shall be referred to the Office of Employee Relations. OER will meet with the agency representatives and the unions representing the affected employees to effect a solution.

V. Cooperation

All employees are encouraged to exercise understanding of the views of others and to cooperate in the effective application of the measures contained herein.

ADMINISTRATIVE BULLETIN

EXECUTIVE OFFICE FOR ADMINISTRATION AND FINANCE

87-4

August 31, 1987

TO: All Agency Heads

RE: Administration of Federal Grants

Effective immediately, Section 302: Notification of Intent to Apply for a Federal Grant, of Administrative Bulletin No. 81-4, dated December 21, 1981, as amended June 6, 1984, entitled: "Administration of Federal Grants", is hereby amended to read:

"302: Notification of Intent to Apply for a Federal Grant

(a) No application or reapplication for a federal grant, including the application of continued funding, shall be submitted to a federal grantor agency without prior review by the executive and legislative agencies identified in Section 302(b). Any federal grant which is included as an appropriation in the state budget shall not be subject to the foregoing review by the House and Senate Committees on Ways and Means. An applicant agency may apply or reapply for federal grant funds that have not been appropriated by the General Court if the reason for the lack of an appropriation is that the availability of the federal grant funds had not been reasonably anticipated prior to enactment of the budget for that particular year. Each notification of intent to apply for a federal grant that has not been appropriated by the General Court must include an explanation of why the availability of federal grant funds, and necessity of their expenditure, was not anticipated prior to enactment of the budget. This section shall not apply to:

(1) federal grant funds to institutions of higher education, including research grants;
(2) research grants to individuals, agencies or institutions, not exceeding fifty thousand dollars in annual amount and not creating new or expanding existing programs or commitments of state resources;

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(3) any federal grant funds not exceeding five thousand dollars in annual amount; and
(4) federal grant funds made available to the state for costs and damages resulting from natural disasters, civil disobedience, or other occurrences of sufficient severity to have occasioned the declaration by the governor of a state emergency.

(b) Any applicant agency shall prepare Form AF G-1. Form AF G-2 shall also be prepared if personnel are to be paid from funds received under a federal grant by advance. The applicant agency shall forward, not less than thirty days prior to submission of the application to the federal grantor agency, one copy of Form AF G-1 and AF G-2, and grant application to each of the following executive and legislative reviewers:

(1) Secretary of the appropriate Executive Office
(2) Budget Director
(3) Personnel Administration
(4) Chairman of the House Ways and Means Committee
(5) Chairman of the Senate Ways and Means Committee
(6) Chairman of the House Committee on Federal Financial Assistance
(7) Chairman of the Senate Committee on Federal Financial Assistance

(c) The Secretary of the appropriate Executive Office shall conclude the review and return the findings to the applicant agency within thirty days of the receipt of the application. The Secretary shall act together with the applicant agency to resolve any matters that would otherwise prevent a recommendation for approval.

(d) The Budget Director shall conclude the review and return the findings to the applicant agency within thirty days of the receipt of the application. The Budget Director shall act together with the applicant agency and the appropriate Secretary to resolve any matters that would otherwise prevent a recommendation for approval.

(e) The Personnel Administrator shall conclude the review and return the findings to the applicant agency within thirty days of the receipt of the application. The Personnel Administrator shall act together with the applicant agency and the appropriate Secretary to resolve any matters that would otherwise prevent a recommendation for approval.

(f) If, after thirty days of notification of intent to apply for a federal grant, no action has been taken by the Commissioner of Administration, the Budget Director, the Personnel Administrator, the Secretary of the appropriate Executive Office, the Chairmen of the House or Senate Ways and Means or Federal Financial Assistance Committees, the application may be submitted to the federal grantor agency.

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(g) An applicant agency that has received conditional approval to apply for a federal grant may not accept federal grant funds until the conditions have been satisfied.

(h) Any applicant agency or state agency grantee that must prepare a state plan as a condition of receiving a federal grant shall file a copy of such plan and any amendments to such plan pursuant to Section 302(b).

Henceforth, the applicant agency will be responsible for the distribution of all applications and reapplications for federal funding to the various executive and legislative reviewers identified in Section 302(b) of this bulletin. In addition, the applicant agency will be responsible for resolving any matters that would otherwise prevent a recommendation for approval by any one of the executive or legislative reviewers."

Agencies are reminded that pursuant to M.G.L. C.29 S.6B applications for federal grant funds must be submitted for review at least 30 days prior to their submission to the federal grantor. If, after thirty days of notification of intent to apply for a federal grant, no action has been taken by any executive or legislative reviewer, the application is presumed to have been approved and may proceed to the federal grantor. Note that agencies are now responsible for distributing single copies of Forms AFG-1 and AFG-2, and the grant application to each of the executive and legislative reviewers.

Your Budget Bureau Analyst (727-2081) is available to assist in compliance with the provisions of this administrative bulletin and to answer any questions you may have.

Frank T. Keefe, Secretary
Executive Office
Administration and Finance

ADMINISTRATIVE BULLETIN

EXECUTIVE OFFICE FOR ADMINISTRATION AND FINANCE

87-6

TO: Cabinet Secretaries and Agency Heads

FROM: Frank T. Keefe, Secretary

DATE: November 2, 1987

SUBJECT: Immigration Reform and Control Act of 1986

1.0 Statement of Purpose and Scope

This bulletin summarizes the obligations imposed by the Immigration Reform and Control Act of 1986 upon employers. Appointing authorities of the Commonwealth are required to comply with this law.

This bulletin does not address the law's application to recruiters or referrers. The law has separate provisions which apply to persons or entities which recruit or refer individuals for employment for a fee.

Within the attachments to this bulletin is a form "I-9" issued by the Immigration and Naturalization Service (I.N.S.), the enforcement agency under the new law. This form may be duplicated and must be filled out for each employee hired after November 6, 1986, who is still employed after May 31, 1987.

Questions concerning this subject should be addressed to legal counsel at the Office of Employee Relations, 727-5403. Any agency that receives a request for inspection of employee records from the I.N.S. should immediately notify legal counsel at the Office of Employee Relations.

2.0 Introduction to the Law

On November 6, 1986, the federal Immigration Reform and Control Act of 1986 became effective. The new law makes it unlawful to knowingly hire aliens after November 6, 1986, who are not authorized to work in the U.S., with some narrow exceptions described below. ("Aliens" are persons who are not U.S. citizens or U.S. nationals.) The law requires all employers to check the identity and employment eligiblity of all persons to be hired and to record the relevant information on a form I-9 for each new employee.

The law carries substantial economic penalties if an employer does not comply with the provisions of the law requiring review and retention of documents for all new employees. An employer who hires an unauthorized alien in violation of the law can be fined $250 to $2,000 for a first offense and up to $10,000 for repeated offenses. Criminal penalties are also authorized for employers who engage in a pattern or practice of violations.

An employer who fails to comply with the paperwork requirements of the law may also be fined $100 to $1,000 per employee for failure to check documentation or for failure to complete the form I-9.

3.0 Outline of Compliance Requirements

The new law requires employers to take certain steps to ensure that they hire persons who are legally entitled to work in this country, outlined as follows:

a. review documents of employees hired after November 6, 1986, to check each employee's identity and eligibility to work;
b. have employees who are covered by the law fill out their part of the form I-9;
c. properly complete the form I-9 within three days for all new hires;
d. check for continuing eligibility to work for those employees whose authorizations to work have an expiration date;
e. retain the form I-9 for three years or for one year after the person leaves employment, whichever is longer.

4.0 Which Individuals are Covered by the Law?

In general, all persons hired after November 6, 1986, are covered by the new law. A form I-9 must be completed for each person hired after November 6, 1986, who is still employed after May 31, 1987, and for each person hired after May 31, 1987.

4.1 Employers Do Not Need to Complete Form I-9 For:

- Persons hired on or before November 6, 1986;
- Persons hired after November 6, 1986, who left employment before June 1, 1987;
- Persons who provide labor to the Commonwealth but are employed by a contractor providing contract services (e.g. employees of an 07 Vendor);
- Persons who are independent contractors, including consultants, as discussed in section 4.2 below;
- Persons who provide domestic service in a private home that is sporadic, irregular or intermittent;
- Volunteers who receive no wages or other remuneration.

4.2 Independent Contractors

As a general rule, an employer who engages the services of an independent contractor such as a consultant, as opposed to an employee, is not responsible for verifying the eligibility of the contractor or the contractor's employees. However, it is a violation of the law for an employer to enter into a contract or subcontract in order to obtain the services of an unauthorized alien.

A case-by-case determination must be made by the appointing authority before an individual or entity is treated as an "independent contractor" under this law. Such a determination must be made regardless of the status claimed by the individual or entity or the budget category used to purchase the service. For example, an "03" designation does not automatically mean that an individual is an "independent contractor" for purposes of the immigration law.

Federal regulations interpreting the law state that "[t]he term 'independent contractor' includes individuals or entities who carry on independent business, contract to do a piece of work according to their own means and methods, and are subject to control only as to results."

According to federal regulations, the following factors should be considered in determining whether an individual or entity is an independent contractor rather than an employee. These factors include, but are not limited to, whether the individual or entity:

- supplies the tools or materials;
- makes services available to the general public;
- works for a number of clients at the same time;
- directs the order or sequence in which the work is to be done; and
- determines the hours during which the work is to be done.

5.0 Completing The Form I-9

For persons hired after May 31, 1987, the form I-9 must be completed at the time of acceptance of employment or no later than three business days after the actual commencement of work. For persons hired between May 7, 1986, and May 31, 1987, who continued in employment after May 31, 1987, the form I-9 should have been completed by September 1, 1987.

For persons hired for a period of less than three business days, the form I-9 must be completed before the end of the employee's first working day.

The form I-9 contains two sections. The employee completes the first section (steps 1,2 and 3). If a preparer or translator assists the employee, the preparer or translator completes step 4. The second section (steps 5 and 6) should be completed by the employer.

The employee will need to provide an original document or documents that establish identity and employment eligibility in order to fill out form I-9. Some documents establish both identity and employment eligibility. These documents appear in List A on the bottom half of form I-9. Other documents establish identity alone (see List B) or employment eligibility alone (see List C). If the person does not provide a document from List A, he or she must produce one from List B and one from List C.

Employers may not prefer certain documents over others on the lists. A complete list of acceptable documents appears in an attachment to this bulletin, entitled Handbook for Employers.

The appointing authority's designee or personnel department should review the document or documents provided by the person. Documents should appear to be genuine and to relate to the individual. If the work authorization document contains restrictions on employment, these should be noted and followed. If the work authorization contains an expiration date, see sections 6.0 and 10.0 below.

6.0 Procedure to Follow in the Event of Lack or Expiration of Documents

If an employee does not have the documents needed, the employee must present to the employer within the three day I-9 completion period a copy of the employee's request to an appropriate agency or person for the document. The employer then may extend the period to twenty-one days from commencement of employment to allow for receipt of the document itself.

If the documents produced by the employee at the time of hire indicate that the authorization to work will expire at a certain future date, the employer must keep track of that date and will need to update the form I-9 to continue to employ the person. At that time, the employee must present a document that either shows an extension of employment eligiblity or a new grant of work authorization. If the employee cannot produce such a document, the employer will be violating the law by continuing to employ such a person even if the employee was earlier authorized to work. A reminder system should be established to identify expiration dates on work authorizations well in advance as extensions often take several months to obtain.

Should an employer determine that the documents produced for the form I-9 are insufficient or concludes that there is a need to terminate an employee because of employment ineligibility, these decisions should be reviewed by the Office of Employee Relations before any action is taken.

6.1 Special Rule

Prior to September 1, 1987, if an employee stated that he or she intended to apply or applied for amnesty ("legalization"), Cuban/Haitian entrant adjustment or special agricultural worker status under the new immigration law, the employee came under the "Special Rule" provision.

Under the Special Rule, the employee was authorized to work without presenting documentation of work authorization until September 1, 1987.

7.0 Legalization

Undocumented aliens are eligible to apply for legalization under the new immigration law until May 4, 1988, if they have been in the U.S. since before January 1, 1982.

If you have employees who appear eligible for legalization, you are encouraged to advise them of special centers which have been set up to assist aliens with their applications. A list of these centers is attached to this bulletin.

8.0 Employees Taking Leaves of Absence or With Breaks in Service

Employees taking approved leaves of absences are to be treated as continuing employees for the purpose of this law. If the employee was hired on or before November 6, 1986, the employer does not need to complete a form I-9 for that employee if he or she is temporarily absent for an approved paid or unpaid leave, strike or temporary lay-off. If the employee was hired after November 6, 1986, the original form I-9 should cover the employee's return subject to any expiration date on the individual's work authorization.

However, if an employee who was hired on or before November 6, 1986, quits or is terminated, and is then rehired, a form I-9 must be completed. Once a form I-9 is completed, it will cover an individual for subsequent rehires by the same employer within three years of the initial hire provided that the individual's work authorization has not expired.

9.0 Employees Transferring Between Agencies of the Commonwealth after November 6, 1986:

Employees transferred between agencies or branches of state government do not need to complete new form I-9's. This includes: persons who were employed by the Commonwealth on or before November 6, 1986, and who transferred to or were hired by another agency or department of the Commonwealth after that date with no break in service. However, if such individuals have a break in service, a new form I-9 is needed.

10.0 Record Retention

The form I-9 must be kept by the employer for three years or one year longer than the person's period of employment, whichever is longer.

Although the law permits employers to copy documents that establish identity and eligibility to work, this is not required. Since these documents may contain sensitive personal data, agencies are encouraged not to retain copies. If copies are kept, they must be kept with the form I-9 and treated as a part of the I-9.

The form I-9 must be kept in a secure place and access must be restricted to prevent unwanted disclosure of personal data.

The information on the form I-9 and any supporting documents may not be used for any purpose other than compliance with this provision of the law.

11.0 Inspections by the I.N.S. and the Department of Labor

The I.N.S. has a right to inspect form I-9's retained by an employer. Any documents copied by the employer and kept with the form I-9 may be subject to inspection by the I.N.S. as part of the form I-9.

The I.N.S. must give at least three days notice prior to an inspection visit. The form I-9's are to be made available at the location requested by the I.N.S. or, if the forms are at another location, at the I.N.S. office nearest that location.

Any agency receiving notice of an inspection visit from the I.N.S. should immediately notify legal counsel at the Office of Employee Relations, 727-5403. This should be done prior to engaging in any substantive discussion with the I.N.S. or presentation of forms to the I.N.S.

The U.S. Department of Labor also has a right to inspect form I-9's, but has not issued regulations as of the date of this bulletin. Any agency receiving an inquiry or notice of inspection regarding the form I-9's from the Department of Labor should immediately contact legal counsel at the Office of Employee Relations.

12.0 Non-discrimination

It is illegal to discriminate against an individual in hiring or firing because of the individual's national origin. It is also illegal to discriminate against an individual on the basis of citizenship status in the case of a U.S. citizen or an intending U.S. citizen. An intending U.S. citizen is an alien with the lawful status as a permanent resident, refugee, asylee or newly legalized temporary resident under this law.

Employers should not selectively ask employees for documents or screen applicants based on nationality, foreign accent or appearance. Employers should not request information concerning an individual's identity or employment eligibility unless this information is requested of all applicants or employees.

The law authorizes civil penalties for employers who violate this prohibition against discrimination; such penalties include orders to hire, back pay and fines up to $2,000 per offense.

13.0 Attachments

Attached to this bulletin are the I.N.S. Handbook for Employers, which contains two copies of the form I-9, and a list of centers where aliens can seek help with legalization.

WHERE TO FIND HELP WITH LEGALIZATION

The following agencies in Massachusetts have set up special centers to assist immigrants with their applications for legalization ("amnesty") under the Immigration Reform and Control Act on 1986. They have been recognized as "Qualified Designated Entities" by the Immigration and Naturalization Service and can give help on a confidential basis.

Boston

Catholic Charitable Neighborhood Clinics:	
Cardinal Cushing Center	(617) 542-9292
Haitian Multi-Service Center	(617) 436-2848
St. Augustine's Parish	(617) 268-8460
Chinese-American Civic Association	(617) 426-9492
Ethiopian Family Center	(617) 536-1081
World Relief, Emmanuel Gospel Center	(617) 262-2265/322-9276

Cambridge/Somerville

Haitian-American Association	(617) 492-6622
Portuguese American League	(617) 628-6065
St. Anthony's Parish	(617) 868-8929

Fall River

SER--Jobs for Progress	(617) 676-1916

Lawrence

International Institute of Greater Lawrence	(617) 687-0981
Catholic Charitable Bureau	(617) 685-5930

Lowell

International Institute of Lowell	(617) 459-9031
Catholic Charitable Bureau	(617) 452-1421

Malden

World Relief	(617) 322-9276

Springfield

Refugee Resettlement Program	(413) 732-6365

Other Services

A Massachusetts recorded referral phone service is available in English, (800) 521-9400, or Spanish, (800) 521-9404.

Information is also available from a multilingual telephone HOTLINE established by Catholic Refugee and Immigration Services at (617) 720-3440.

Union members may also find help through their unions. The Immigrant Rights Advocacy Training and Education project (IRATE), formed by a coalition of unions, may be reached at (617) 266-0795.